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PRODUCTION AND MARKETING ADMINISTRATION

SERVICE AND REGULATORY ANNOUNCEMENTS NO. 107

MAY 19 1950

REGULATIONS OF THE SECRETARY OF AGRICULTURE
FOR THE ENFORCEMENT OF THE PRODUCE AGENCY
ACT

(Title 7, Ch. I, Pt. 47 of the Code of Federal Regulations)

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On April 29, 1947, notice of proposed rule making was published in the FEDERAL REGISTER (12 F. R. 2774) regarding the revision of the regulations (7 CFR and Supps. 48.1 et seq.) issued under the so-called Produce Agency Act, approved March 3, 1927 (44 Stat. 1355; 7 U. S. C. 494), entitled "An act to prevent the destruction or dumping, without good and sufficient cause therefor, of farm produce received in interstate commerce by commission merchants and others and to require them truly and correctly to account for all farm produce received by them." After consideration of all relevant matters presented, including the proposals set forth in the notice, the following revised regulations are hereby promulgated, effective August 1, 1947:

DEFINITIONS

48.1 **Meaning of words.** Words in this part in the singular form shall be deemed to import the plural, and vice versa, as the case may demand.

48.2 **Definitions.**—Unless the context otherwise requires, the following terms shall be construed as follows:

(a) "Act" means "An act to prevent the destruction or dumping, without good and sufficient cause therefor, of farm produce received in interstate commerce by commission merchants and others, and to require them truly and correctly to account for all farm produce received by them," approved March 3, 1927 (44 Stat. 1355; 7 U. S. C. 491–497).

(b) "Person" means an individual, partnership, association or corporation.

(c) "Secretary" means the Secretary of the United States Department of Agriculture or any person to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated, to act in his stead.

(d) "Administration" means the Production and Marketing Administration, United States Department of Agriculture.

(e) "Administrator" means the Administrator of the Production and Marketing Administration, United States Department of Agriculture, or any officer or employee of the Administration to whom authority has heretofore lawfully been delegated, or to whom authority may hereafter lawfully be delegated, to act in his stead.

(f) "Produce" means all fresh fruits and fresh vegetables generally considered by the trade as perishable fruits and vegetables, melons, dairy or poultry products, or any perishable farm products of any kind or character.

(g) "Truly and correctly to account" means, unless otherwise stipulated by the parties, that the consignee of produce shall, within 10 days after the final sale is made of any produce received for sale on consignment in interstate commerce or in the District of Columbia, render to the consignor thereof a true and correct itemized statement of the gross sales as well as all selling charges and all other charges or expenses paid and a statement of the net proceeds or deficit, and make full payment to the consignor of the net proceeds so received together with a full explanation of the disposition of any and all produce not sold.

(h) "Good and sufficient cause" means, with respect to destroyed, abandoned, discarded, or dumped produce, that the produce so dealt with had no commercial value, or that some other legal justification for so dealing with such produce existed, such as an order of condemnation by a health officer or definite authority from the shipper.

(i) "Commercial value" means any value that the produce may have for any purpose that can be ascertained in the exercise of due diligence by the consignee without unreasonable expense or loss of time.

ADMINISTRATION

48.3 Administrator.—The Administrator shall perform, for and under the supervision of the Secretary, such duties as the Secretary may require in the administration and enforcement of the provisions of the act and the regulations in this part.

VIOLATIONS

48.4 Destroying or dumping.—Any person receiving produce in interstate commerce or in the District of Columbia for or on behalf of another, who, without good and sufficient cause, shall destroy or abandon, discard as refuse, or dump any produce, directly or indirectly or through collusion with any person, shall be considered to have violated the act.

48.5 False report or statement.—Any person, receiving produce in interstate commerce or in the District of Columbia for or on behalf of another, shall be considered to have violated the act if, knowingly and with intent to defraud, he makes any false report or statement to the person from whom such produce was received concerning the handling, condition, quality, quantity, sale, or disposition thereof.

48.6 Failure to account.—Any person, receiving produce in interstate commerce or in the District of Columbia for or on behalf of another, shall be considered to have violated the act, if, knowingly and with intent to defraud, he fails truly and correctly to account to the person from whom such produce was received.

CERTIFICATES OF INSPECTION

48.7 Inspection and certification.—The classes of persons described in paragraphs (a), (b), and (c) of this section are hereby designated to make inspections regarding the quality and condition of produce received in interstate commerce or in the District of Columbia, and to issue certificates setting forth the quality and condition of such produce which is to be destroyed, abandoned, discarded as refuse, or dumped. Any person shipping, receiving, or financially interested in such produce may make application for such inspection to the designated classes of persons.

(a) Any person authorized by the United States Department of Agriculture to inspect fruits and vegetables under any law (including, but not being limited to, the provisions of the so-called Farm Products Inspection law, contained in the Department of Agriculture Appropriation Act, 1947 (Pub. Law 422, 79th Cong., 2d Sess., approved June 22, 1946), the Agriculture Marketing Act of 1946, and any amendment thereto, and the Perishable Agricultural Commodities Act,

1930 (46 Stat. 531, as amended; 7 U. S. C. 499a et seq.), providing for the market inspection of farm products;

(b) Any health officer or food inspector of any State, county, parish, city, or municipality or of the District of Columbia; or

(c) When, and only when, no inspector or health officer, designated in paragraph (a) or (b) of this section, is available, the inspection and certification provided in this section may be made by any two persons having no financial interest in the produce involved or in the business of any person financially interested therein, and who are unrelated by blood or marriage to any such financially interested person, and who, at the time of the inspection and certification, and for a period of at least one year immediately prior thereto, have been engaged in the handling of the same general kind or class of produce with respect to which the inspection and certification are to be made. Any certificate issued by any persons designated in this paragraph must include a statement that each of them possesses the requisite qualifications.

48.8 Certificates; issuance; contents.—Each certificate issued under the act and pursuant to the regulations in this part must identify the particular lot of produce inspected; name the commodity; give the date upon which the inspection was made; state the quantity of the produce, the name and address of the agent handling the same and the fee, if any, charged therefor; and shall certify as to the quality and condition of such produce, and that it was without commercial value at the time of inspection.

48.9 Application for inspection and certification; how made; contents.—Application for inspection may be filed with the person or persons authorized to make such inspection or with anyone employed in such person's office and may be made in writing or by telegraph, or orally or by telephone. If made orally, the person or persons requested to make the inspection may require that it be confirmed in writing by the applicant. The application must show the name and address of the shipper, the name and address of the applicant, and the location and description of the produce, with marks, brands, or other specific identification if practicable.

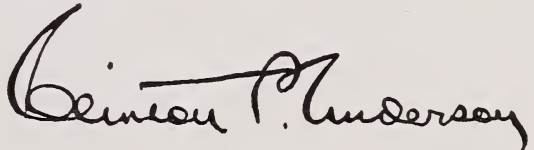
48.10 Copy of certificate to the Administrator.—Any person issuing a certificate under the regulations in this part must mail promptly a copy of the certificate to the Administrator, Production and Marketing Administration, United States Department of Agriculture, Washington 25, D. C.

COMPLAINTS

48.11 Filing of complaints.—Any person having reason to believe that the act or the regulations in this part have been violated should submit promptly all available facts with respect thereto to the Administrator for investigation and appropriate action.

Done at Washington, D. C., this 27th day of June 1947. Witness my hand and the seal of the Department of Agriculture.

[SEAL]



Secretary of Agriculture.

THE PRODUCE AGENCY ACT

(Approved March 3, 1927. 44 Stat. 1355)

AN ACT To prevent the destruction or dumping, without good and sufficient cause therefor, of farm produce received in interstate commerce by commission merchants and others and to require them truly and correctly to account for all farm produce received by them.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That after June 30, 1927, any person, firm, association, or corporation receiving any fruits, vegetables, melons, dairy or poultry products, or any perishable farm products of any kind or character, hereinafter referred to as produce, in interstate commerce, or in the District of Columbia, for or on behalf of another, who without good and sufficient cause

therefor, shall destroy, or abandon, discard as refuse or dump any produce directly or indirectly, or through collusion with any person, or who shall knowingly and with intent to defraud make any false report or statement to the person, firm, association, or corporation from whom any produce was received, concerning the handling, condition, quality, quantity, sale or disposition thereof, or who shall knowingly and with intent to defraud fail truly and correctly to account therefor shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$100 and not more than \$3,000, or by imprisonment for a period of not exceeding one year, or both, at the discretion of the court. The Secretary of Agriculture shall by regulation provide for the making of prompt investigations and the issuing of certificates as to the quality and condition of produce received in interstate commerce or in the District of Columbia, upon application of any person, firm, association, or corporation shipping, receiving, or financially interested in, such produce. Such regulations shall designate the classes of persons qualified and authorized to make such investigations and issue such certificates, except that any such investigation shall be made and any such certificate shall be issued by at least two disinterested persons in any case where such investigation is not made by an officer or employee of the Department of Agriculture or of any State or political subdivision thereof or of the District of Columbia. A certificate made in compliance with such regulations shall be prima facie evidence in all Federal courts of the truth of the statements therein contained as to the quality and condition of the produce; but if any such certificate is put in evidence by any party, in any civil or criminal proceeding, the opposite party shall be permitted to cross-examine any person signing such certificate, called as a witness at the instance of either party, as to his qualifications and authority and as to the truth of the statements contained in such certificate.

SEC. 2. The Secretary of Agriculture is hereby authorized and directed to enforce this Act. It is hereby made the duty of all United States attorneys to prosecute cases arising under this Act, subject to the supervision and control of the Department of Justice.

SEC. 3. The Secretary of Agriculture may make such rules and regulations as he may deem advisable to carry out the provisions of this Act and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and may call upon any Federal department, board, or commission for assistance in carrying out the purposes of this Act; and shall have the power to appoint, remove, and fix the compensation of such officers and employees not in conflict with existing law and make such expenditures for rent, outside the District of Columbia, printing, telegrams, telephones, books of reference, books of law, periodicals, newspapers, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be deemed necessary to the administration of this Act in the District of Columbia and elsewhere and there is hereby authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, the sum of \$25,000 to be available for expenditure during the fiscal year beginning July 1, 1927, and the appropriation of such additional sums as may be necessary thereafter to carry out the purposes of this Act is hereby authorized. This Act shall not abrogate nor nullify any other statute, whether State or Federal, dealing with the same subjects as this Act, but it is intended that all such statutes shall remain in full force and effect except in so far only as they are inconsistent herewith or repugnant hereto.

SEC. 4. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

Approved, March 3, 1927.